

OCA 87-2507

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	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	xxx	
3. DD/Senate Affairs		X
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5. DD/House Affairs		X
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SUSPENSE

16 June 87
DateAction Officer:

Remarks:

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

June 12, 1987

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -
National Security Council
Central Intelligence Agency ✓

87-2507

OCA FILE

REPLY #

Leg

SUBJECT: DOD proposed amendment on counterintelligence polygraph program in DOD Authorization Bill.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Noon Tuesday, June 16, 1987.

Questions should be referred to Arnold Donahue (395-4800), or to Hilda Schreiber (395-7362), the legislative analyst in this office.

Jeffrey A. Weinberg for
Assistant Director for
Legislative Reference

Enclosures

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THE SECRETARY OF DEFENSE
WASHINGTON, THE DISTRICT OF COLUMBIA

Honorable Les Aspin
Chairman, Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Your letter of May 14, 1987 concerning the Department of Defense (DoD) counterintelligence polygraph examination program is greatly appreciated.

We do believe that the Young Amendment, as amended by the Nichols amendment, to establish a DoD counterintelligence program which was agreed to on May 11 by the House of Representatives, is a fair approach, with one exception. As set forth in the proposed amendment forwarded to you in my April 21, 1987 letter, we believe the statute should contain additional language exempting "individuals employed by, or assigned or delegated to, offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs, and the contractors of such offices."

As you know, this special collection program is one of the most important and vital national security efforts in existence. Its sensitivity, we believe, warrants exemption from the proposed statute's limitations to the same degree provided for in the bill to the Central Intelligence Agency and the National Security Agency. I would certainly appreciate your support in assuring such exemption in the bill along the lines of the language set forth in quotes above.

Additionally, at subsection (g), paragraph (3), the word "cryptographic" should be substituted for "cryptologic." This is consistent with the wording of the FY 86 Defense Authorization Act as well as with the intent of the Congress to focus application of the counterintelligence scope polygraph program on individuals accessing our most sensitive codes and cypher systems.

Again, I wish to thank you for your interest in our counterintelligence polygraph program and earnestly solicit your support of the bill endorsed by the House of Representatives on May 11, 1987 with the revisions detailed above.

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If you desire further information on this matter, we shall be pleased to meet further with you or your staff, as appropriate.

Sincerely,

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OFFICE OF
THE SECRETARY OF DEFENSE**U.S. House of Representatives**
COMMITTEE ON ARMED SERVICES

Washington, DC 20515

ONE HUNDREDTH CONGRESS

LES ASPIN, WISCONSIN, CHAIRMAN

May 14, 1987

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S. BEN WHOLP, STAFF DIRECTOR

Honorable Caspar W. Weinberger
Secretary of Defense
Department of Defense
Washington, D.C. 20301

Dear Mr. Secretary:

Thank you for your April 21 letter concerning the department's counterintelligence polygraph examination program and your recommendation for legislation which would provide stability to the program.

As you may know, the House of Representatives on May 11 agreed to the Young Amendment, as amended by the Nichols Amendment, to establish a counterintelligence polygraph program. That amendment would authorize the administration of not more than 20,000 counterintelligence polygraph examinations in each of fiscal years 1988, 1989 and 1990, and not more than 10,000 examinations in any year thereafter in which the Congress does not authorize a specific number. Examinations would be mandatory for persons entrusted with information in special access programs, while it would be permissive, on a random basis, for persons entrusted with classified information other than special access programs.

I believe that the program authorized by this amendment should be responsive to the requirements of the Department of Defense. If there should be any problem resulting from the amendment, I would appreciate hearing from you at the earliest opportunity.

Sincerely,


Les Aspin
Chairman

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THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

21 APR 1987

Honorable Les Aspin
Chairman, Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Department of Defense (DoD) has a comprehensive personnel security program which encompasses some 2.7 million persons with access to classified Defense information. All of these employees are subject to various investigative requirements; those with higher level clearances (about 350,000) receive the most thorough investigations. All persons with security clearances operate in an environment of security cognizance which includes both physical and informational security requirements.

Within the realm of classified DoD information, certain pieces of information and programs are considered to be so sensitive that the unauthorized disclosure of the information could reasonably be expected to: (1) jeopardize human life or safety; (2) result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security; or (3) compromise technologies, plans or procedures vital to the strategic advantage of the United States. Your Committee has recognized the sensitivity of such information and, in the Defense Authorization Act, 1986, cited that "a balance must be struck between the rights of the individual and the exigencies of national security." Accordingly, DoD was directed to implement a program based upon DoD Directive 5210.48, the "Department of Defense Polygraph Program," report specific results on an annual basis, and establish a continuing polygraph research program.

DoD has indeed established a program in coordination and consultation with Congress, has reported all results to Congress, and is in the process of instituting a research program. Our progress has been deliberate because we have not and will not compromise on quality. Our examiners are well educated, highly trained investigators who are skilled in interview and interrogation. Each receives training at what is recognized as the premier polygraph training facility in the world: the Defense Polygraph Institute, Ft. McClellan, AL. All examiners undergo rigorous on the job, refresher and advanced training. Additionally, all

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examinations undergo a comprehensive quality control review. DoD takes no adverse action against individuals who refuse to take a polygraph nor will adverse action be based solely upon chart readings.

DoD is of the opinion that an impartial review of the DoD Polygraph Test Program will reveal that it is operating precisely as Congress intended it to. The program has not falsely accused anyone, has produced few problems, is favorably accepted by DoD employees, has developed significant security information, and has produced results to confirm the belief that it does indeed deter and detect espionage. Moreover, the information developed through use of the polygraph simply could not have been obtained by any other means.

DoD is now approaching a critical juncture for this program. In the last three Defense Authorization Acts, the Congress has imposed statutory limits on the numbers of counterintelligence-scope polygraph examinations the Department may administer (3500 in FY 85 and in FY 86, and 7000 in FY 87). We have attempted to expand our capability to hire and train qualified examiners to satisfy these requirements. But so long as there remains the uncertainty of whether Congress will or will not authorize the program on a continuing basis, these efforts are hampered. In short, the year-to-year authorization of the program limits our ability to attract quality people and hampers our capability to deliver the sort of quality training they require and deserve.

Initially we agreed that it made sense to proceed at a slow pace to see whether the program produced substantial problems in its implementation, and whether it would, in fact, produce the results desired. We believe that the program to date has proven itself on both counts and should become a continuing part of the Department's security program. This is not to say we necessarily contemplate a program on a much larger scale than we presently have, or one which exceeds the parameters of our current effort. We also would continue to welcome the Committee's participation, at whatever level of involvement it may wish, in continuing oversight and monitoring of the polygraph program as a whole. We would like, however, to put the program on a stronger footing.

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In this regard, we would recommend that in lieu of the year-to-year authority, the Committee continue to require annual reports which will provide it an opportunity to stay abreast of the program, and establish the limitation that the total number of examinations conducted under the DoD counterintelligence-scope polygraph program will not exceed 10,000 in any given fiscal year. This figure, however, is based upon our best available projections at this time. Should it arise at some future date that expansion of the program would be in the interest of national security, we would like the opportunity to approach your Committee, and that of the U.S. Senate, to provide justification for a prudent increase. A proposed amendment, keyed to certain features of the existing program, is attached for your consideration.

In any event, we stand ready to work with you and your staff in arriving at a mutually agreeable position in this year's bill.

Sincerely,



Attachment
As Stated

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PROPOSED LANGUAGE FOR THE DEFENSE AUTHORIZATION ACT, 1988**Sec. ____.**

(a) **IMPLEMENTATION OF THE CONTINUING PROGRAM.** - The Secretary of Defense shall issue regulations within 120 days of enactment of this section which provide for counterintelligence-scope polygraph examinations (hereafter referred to as limited polygraph examinations) to be used as a condition of initial or continued access by employees and contractors of the Department of Defense to certain categories of classified information. Such regulations shall provide:

(1) Any employee or contractor having a Top Secret security clearance may be subject to a limited polygraph examination while such clearance is in effect. Persons selected for such examinations shall be identified on a random basis, in accordance with procedures established by the Secretary.

(2) The Secretary may, at his discretion, require limited polygraph examinations for employees or contractors cleared for Top Secret or Secret information who also require access to particularly sensitive activities, projects, or operations, classified at such levels.

(3) The analysis of the polygraph examination charts conducted pursuant to this section shall not be used as the sole basis for denying eligibility for clearance or access to classified information, although the Secretary may determine that in specific cases, based on his written finding that the

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information in question is of such extreme sensitivity that access under the circumstances poses an unacceptable risk to national security.

(4) Individuals who refuse to submit to limited polygraph examinations conducted pursuant to this section may be denied clearance or access to the classified information or program which necessitated the requirement for the limited polygraph examination, or, if clearance or access has already been granted, may have such clearance or access withdrawn. The Secretary shall, to the extent feasible, however, retain such persons in positions of equal grade and benefits, which do not require such clearance or access.

(b) REPORTS. - The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report, submitted no later than December 31, concerning the Department's use of polygraph examinations. The annual report to the Committees shall provide:

(1) the number of polygraph examinations conducted during the fiscal year;

(2) a description of the purposes and results of such examinations;

(3) where polygraph examinations were used for screening purposes, the criteria used for selecting programs and individuals for examinations;

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(4) the number of persons who refused to submit to an examination, and the actions taken as a result of such refusal;

(5) the number of persons who indicated deception during an examination, and the actions taken as a result of such indications;

(6) an accounting of those cases in which a) more than two series were needed to render a conclusion or resolve discrepancies, or b) a second series was administered on a date subsequent to the date the first series was administered; and

(7) a status report on all polygraph research undertaken during the fiscal year.

(c) LIMITATIONS - During any Fiscal Year, the total number of persons required to take a limited polygraph examination under this section may not exceed 10,000.

(d) NON-APPLICATION OF SECTION. - The provisions of this section do not apply to --

(1) individuals assigned or detailed to the Central Intelligence Agency or any expert or consultant under a contract with the Central Intelligence Agency;

(2) individuals employed by or assigned or detailed to the National Security Agency, experts or consultants under contract to the National Security Agency, an employee of a contractor of the National Security Agency, or an individual applying for a position in the National Security Agency;

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(3) individuals assigned to a space where sensitive cryptographic information is produced, processed, or stored; or

(4) individuals employed by, or assigned or detailed to, offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs, and the contractors of such offices.

(d) DEFINITIONS. - For the purposes of this section --

(1) the term "employees and contractors of the Department of Defense" includes all civilian employees and uniformed military service personnel, consultants, contractors, subcontractors, agents, and others who may be acting for, or on behalf of the Department of Defense.

(2) the terms "counterintelligence-scope" or "limited" polygraph examination means a polygraph examination limited in scope to determining whether the subject has committed, is committing, or plans to commit espionage against the United States, or knows of others involved in the commission of such acts. The purpose of such examinations shall not be to ascertain whether the subject has made disclosure of information to Congress or the press.